



PUBLIC NOTICE

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DA 20-232
March 5, 2020

AUCTION OF FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR APRIL 28, 2020

STATUS OF SHORT-FORM APPLICATIONS TO PARTICIPATE IN AUCTION 106

AU Docket No. 19-290

1. By this Public Notice, the Office of Economics and Analytics (OEA), in conjunction with the Media Bureau (MB), announces the status of the 133 short-form applications received for Auction 106.¹ This auction will offer 130 construction permits in the FM broadcast service, with bidding scheduled to begin on Tuesday, April 28, 2020.² This Public Notice also provides other important information, deadlines, and reminders relating to the auction.

I. SHORT-FORM APPLICATIONS AND UPFRONT PAYMENTS

A. Status of Short-Form Applications

2. The short-form applications (FCC Forms 175) for Auction 106 have been reviewed for completeness and compliance with the Commission’s rules, and have been classified into the categories listed below.

| | |
|-------------------------|-----------------|
| Complete | 85 applications |
| Incomplete | 37 applications |
| Rejected | 11 applications |

3. **Complete Applications.** Attachment A to this Public Notice lists the short-form applications for Auction 106 that are accepted for filing and complete. Each of these applicants will become a qualified bidder upon receipt by the Commission of the required upfront payment by the March 20, 2020, deadline described below.³ Each applicant must also maintain the accuracy of its short-form application as required by sections 1.65 and 1.2105(b) of the Commission’s rules.⁴ Attachment A indicates the construction permits selected by each applicant on its short-form application. If an applicant

¹ A copy of this Public Notice will be sent by overnight delivery to the contact person listed on the FCC Form 175 for each Auction 106 applicant.

² See *Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 106*, Public Notice, 34 FCC Rcd 11993 (OEA/MB 2019) (*Auction 106 Procedures Public Notice*).

³ See section I.B., below; see also 47 CFR § 1.2106 (upfront payment rule). If a former defaulter or a former delinquent fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, the applicant will not be eligible to participate in bidding in the auction. See *Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12023, para. 98.

⁴ 47 CFR §§ 1.65, 1.2105(b). Important information about this continuing obligation is found at section III.A., “Duty to Maintain Accurate Information in Short-Form Applications,” below.

claimed a new entrant bidding credit,⁵ the applicant's claimed bidding credit percentage for each construction permit is indicated as 35% or 25%.

4. Designation of an application as complete indicates the applicant has provided the certifications and basic information concerning its qualifications as required by the Commission's competitive bidding rules for participation in the auction. Under the Commission's two-phased auction application process, a winning bidder must submit a long-form application after the close of the auction to demonstrate its qualifications to hold a Commission construction permit or license and, if a bidding credit is requested, its bidding credit eligibility.⁶ Thus, a determination that a short-form application is complete and complies with the Commission's competitive bidding rules and policies is not determinative of an applicant's qualifications to hold a license or of entitlement to a bidding credit. In the event that an applicant is found unqualified to be a Commission permittee or licensee or is ineligible for claimed designated entity benefits, it will be liable for any obligations incurred as a result of its participation in the auction.⁷

5. **Incomplete Applications.** Attachment B to this Public Notice lists the short-form applications for Auction 106 that are accepted for filing but found to be incomplete or otherwise deficient. Each of these applicants will receive a letter identifying the deficiency(ies) in its application. This letter will be sent to the contact person and contact address listed on the incomplete application via overnight delivery, along with a copy of this Public Notice. To become a qualified bidder, each applicant must make the required upfront payment and resubmit its application, having corrected any deficiencies, by the March 20, 2020, deadline.⁸ Each applicant must also maintain the accuracy of its short-form application as required by sections 1.65 and 1.2105(b) of the Commission's rules.⁹

6. **Rejected Applications.** Attachment C to this Public Notice lists each short-form application for Auction 106 classified as rejected. An applicant whose application has been classified as rejected is disqualified from participation in Auction 106. The Commission concluded in the Second Report and Order in *Reexamination of the Comparative Standards for Noncommercial Educational Applicants* that any application for a noncommercial educational (NCE) station that is mutually exclusive with any application for a commercial broadcast station will be returned as unacceptable for filing.¹⁰ Each application identified in Attachment C has checked "yes" to the Noncommercial Educational election question on its FCC Form 175 for the FM broadcast stations selected on that application, is mutually exclusive with at least one application for an FM commercial broadcast station,¹¹ and therefore is excluded from further Auction 106 participation.¹²

⁵ The new entrant bidding credit is not available to an applicant if it, and/or any individual or entity with an attributable interest in the applicant, has an attributable interest in more than three media of mass communications, or in any existing media of mass communications in the "same area" as the broadcast facility proposed in this auction. 47 CFR § 73.5007. See 47 CFR § 73.5007(b)(1)-(3) for the specific service definitions of "same area."

⁶ See 47 CFR §§ 1.2107, 1.2109, 73.5005; see also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2376-77, paras. 163-168 (1994) (*Competitive Bidding Second Report and Order*).

⁷ See generally 47 CFR § 1.2109.

⁸ See 47 CFR §§ 1.2105(b), 1.2106.

⁹ 47 CFR §§ 1.65, 1.2105(b).

¹⁰ 47 CFR § 73.5002(b); *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, Second Report and Order, 18 FCC Rcd 6691, 6699-6700, paras. 21-22 (2003), Memorandum Opinion and Third Order on Reconsideration, 23 FCC Rcd 17423 (2008).

¹¹ Applications specifying the same FM station construction permit are considered mutually exclusive. *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, MM Docket No. 97-234, First Report and Order, 13 FCC Rcd 15920, 15974-75, para. 142 & nn.152-53 (1998) (*Broadcast Competitive Bidding Order*), on recon., Memorandum (continued....)

B. Upfront Payments

7. Upfront payments for Auction 106 are due in the proper account at the U.S. Treasury **by 6:00 p.m. Eastern Time (ET) on Friday, March 20, 2020**. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. **Payments must be made only by wire transfer and only in accordance with the instructions provided in the *Auction 106 Procedures Public Notice*, including its Attachment C.**¹³ No other payment method is acceptable for this auction.¹⁴ Each applicant must also complete and transmit an FCC Remittance Advice Form (FCC Form 159, February 2003 edition) to the Commission following the instructions provided in Attachment C to the *Auction 106 Procedures Public Notice*. Each applicant is reminded to provide its FCC registration number (FRN) on the Form 159 and to submit the same FRN with all future payments for Auction 106. At least one hour before placing the order for the wire transfer (but on the same business day), each applicant must submit a completed FCC Form 159 to the FCC by fax at (202) 418-2843, or by email to RROGWireFaxes@fcc.gov.

8. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete Form 159.¹⁵ An applicant should discuss arrangements and deadlines with its financial institution well ahead of the due date regarding its wire transfer (including that financial institution's specific wire transfer requirements) and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. The Commission has repeatedly cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.¹⁶ **Each applicant should obtain confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.** For confirmation from the Commission, an applicant may contact staff of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions listed at the end of this Public Notice. Detailed information regarding upfront payments can be found in the *Auction 106 Procedures Public Notice* under section III.E.¹⁷

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Opinion and Order, 14 FCC Rcd 8724 (1999) (*Broadcast First Reconsideration Order*), on further recon., Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999), *aff'd*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196 (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046 (D.C. Cir.), *aff'd*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000).

¹² OEA and MB provided guidance on this NCE status election in the *Auction 106 Procedures Public Notice*, including an explanation of the consequences of claiming such status in the context of this auction. *See Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12015, para. 67.

¹³ *See Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12020-21, 12062, paras. 88-92, Attachment C: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159 – February 2003 edition).

¹⁴ The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

¹⁵ Detailed instructions for submitting upfront payments, including how to complete the Form 159, may be found in the *Auction 106 Procedures Public Notice*, including its Attachment C. *See Auction 106 Procedures Public Notice*, 34 FCC Rcd 12020-21, 12062, paras. 88-92, Attachment C: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159 – February 2003 edition). An electronic, fillable pdf version of Form 159 may be accessed by clicking on the \$ icon on the auction application page of the applicant's electronic Form 175 or the following link: <https://transition.fcc.gov/Forms/Form159/159.pdf>.

¹⁶ *See, e.g., Four Corners Broadcasting, LLC*, Letter Order, 25 FCC Rcd 9046 (WTB 2010) (denying waiver request of upfront payment deadline); *Spectrum Acquisition, Inc.*, Letter Order, 23 FCC Rcd 4765 (WTB 2008) (denying waiver request of upfront payment deadline); *Lynch 3G Communications Corp.*, Letter Order, 18 FCC Rcd 11552 (WTB 2003) (finding that upfront payment was not timely submitted).

¹⁷ *See Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12020-21, 12062, paras. 88-92, Attachment C.

C. Short-Form Application Changes and Resubmission

9. Each applicant whose application for Auction 106 has been identified as incomplete must address each defect in its application during the resubmission window, which is now open.¹⁸ Corrected applications must be submitted **prior to 6:00 p.m. ET on Friday, March 20, 2020**. This will be the only opportunity to cure application defects. Late resubmissions will not be accepted. An applicant that filed an application deemed to be incomplete or otherwise deficient, as identified in Attachment B to this Public Notice, must submit a timely and sufficient upfront payment before the Commission will review its resubmitted application. If an application is incomplete or otherwise deficient after the resubmission deadline has passed or if the required upfront payment is not made by the specified deadline, the applicant will not be permitted to participate in bidding.¹⁹

10. During this resubmission window, all applicants may make minor changes as described below in more detail. We remind applicants that sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application.²⁰ To the extent that changes may be made directly in the electronic Form 175 at the time of the amendment, an applicant must modify its short-form application electronically.²¹ An applicant seeking to report changes outside of the resubmission window must submit a letter briefly summarizing the changes by email to the following address: auction106@fcc.gov. Questions about reporting application changes should be directed to the Auctions Division at (202) 418-0660.

11. The electronic Form 175 will not permit an applicant to make changes to specific data fields in its application after the short-form application filing deadline, including changes to the following data fields: applicant name, legal classification, certifier, bidding credit, and permit selection. Administrative and minor changes can be made in other specific data fields, including, for example, deletion and addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant and its contact persons, and changes to responsible party. While changes can be made to ownership and agreement information,²² we remind each applicant that any application changes must comply with the Commission's rules, which prohibit, among other things, changes in ownership that would constitute an assignment or transfer of control, as well as changes in ownership or agreements that would constitute violations of section 1.2105.²³ If any application is changed to effect a major amendment, such as a change in control, the applicant will be ineligible to bid in the auction.²⁴

¹⁸ 47 CFR § 1.2105(b)(2).

¹⁹ Any applicant that submits a short-form application but fails to become a qualified bidder for any reason, including a failure to timely submit a sufficient upfront payment, will retain its status as an applicant in Auction 106 and will remain subject to the Commission's rules prohibiting certain communications, 47 CFR §§ 1.2105(c) and 73.5002(d). *See, e.g., Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (*Star Wireless*).

²⁰ 47 CFR §§ 1.65, 1.2105(b). Important information about this continuing obligation is found at section III.A., "Duty to Maintain Accurate Information in Short-Form Applications," below.

²¹ During the resubmission phase, applicants will have electronic access to update the following application fields: jurisdiction of formation/country of citizenship, applicant address, responsible party information, responsible party address, contact information, contact address, authorized bidder information, bidding preference (telephonic or electronic), agreement information, and ownership information. During the resubmission period, some required updates in an Auction 106 FCC Form 175 may need to be submitted by uploading an attachment. During all phases of the application process, applicants have electronic access to make certain administrative changes including updates to: applicant address, responsible party address, contact information, contact address, and bidding preference (telephonic or electronic).

²² For more information on making administrative changes to an existing application, see "Modifying an FCC Form 175" in the *Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12016-17, 12059-60, paras. 68-71 and Attachment B, paras. 98-102.

²³ *See* 47 CFR § 1.2105(a), (b), (c).

II. OTHER IMPORTANT AUCTION 106 INFORMATION

12. **Announcement of Qualified Bidders.** Approximately three weeks after the upfront payment deadline, following Commission review of resubmitted short-form applications and the correlation of payments and applications, a public notice listing all applicants qualified to bid in Auction 106 will be released. The same public notice will also include bidding schedules for both the mock auction and the first day of bidding in the auction.

13. When two or more short-form applications are submitted specifying the same FM allotment in Auction 106, mutual exclusivity exists for auction purposes and that construction permit must be awarded by competitive bidding procedures.²⁵ Once mutual exclusivity exists for auction purposes, even if only one applicant is qualified to bid or in fact places a bid for a particular construction permit, that applicant is required to submit a bid in order to obtain the construction permit.²⁶

14. All qualified bidders are automatically registered for the auction.²⁷ For security purposes, registration materials will be sent by overnight delivery only to the contact person at the contact address listed on each qualified bidder's FCC Form 175. The package will include an RSA SecurID® token (RSA token) issued by the Commission specifically assigned to each of the authorized bidders identified on the qualified bidder's FCC Form 175. The RSA token will be required for each authorized bidder to log in and access the FCC auction bidding system in order to participate in the mock auction and place bids in Auction 106. The package will also contain the web address and instructions for accessing and logging in to the auction bidding system, the FCC assigned username (User ID) for each of the authorized bidders identified on the qualified bidder's FCC Form 175, and the Auction Bidder Line phone number.

III. APPLICANTS' CONTINUING OBLIGATIONS

A. Duty to Maintain Accurate Information in Short-Form Applications

15. We remind applicants that sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending short-form application to participate in Auction 106.²⁸ Each applicant must amend its short-form application to furnish additional or corrected information within five days of a significant occurrence, or no more than five days after the applicant becomes aware of the need for amendment.²⁹ An applicant's obligation to make such a modification or amendment to its pending application continues until it is made.³⁰ All changes are subject to review by Commission staff.

16. An applicant that needs to make permissible minor changes to its FCC Form 175, or that must make changes in order to maintain the accuracy and completeness of its short-form application during a time when the FCC Auction Application System is available to the applicant for purposes of

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²⁴ See 47 CFR § 1.2105(b)(2). See also, e.g., *Koch Broadcasting Corp.*, Letter Order, 21 FCC Rcd 147 (WTB/MB 2006) (*Koch Broadcasting Corp.*) (dismissing short-form application filed for AM Auction 84 due to major amendment changing control).

²⁵ See *Broadcast Competitive Bidding Order*, 13 FCC Rcd at 15979 n.166.

²⁶ See *Auction 106 Procedures Public Notice*, 34 FCC Rcd at 11996-97, para. 5.

²⁷ *Id.*, 34 FCC Rcd at 12023-24, paras. 99-101.

²⁸ 47 CFR §§ 1.65, 1.2105(b). An applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

²⁹ *Id.* See also 47 CFR § 1.2105(c)(4) (any applicant that makes or receives a prohibited communication must report such communication in writing to the Commission no later than five business days after the communication occurs).

³⁰ See *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521-23, paras. 6-8 (2010) (*Part 1 Procedural Amendments Order*).

making the type of change(s) required,³¹ must make such changes electronically to its FCC Form 175 using the FCC Auction Application System. Between the closing of the resubmission filing window and the release of the public notice announcing qualified bidders for Auction 106, the only changes an applicant can make using the FCC Auction Application System are minor changes, specifically the deletion or addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, or change in the applicant's selected bidding preference (telephonic or electronic).³² For all other application changes between the closing of the resubmission filing window and prior to the release of the public notice announcing the close of bidding for Auction 106, an applicant must submit a letter briefly summarizing the changes to its FCC Form 175 by email to auktion106@fcc.gov.³³ An applicant must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

17. For more information on an applicant's continuing obligation to maintain the accuracy and completeness of information furnished in its application to participate in Auction 106, applicants should refer to previous Auction 106 public notices, including the *Auction 106 Procedures Public Notice*.³⁴

B. Due Diligence

18. Potential bidders are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities being offered in Auction 106. The Commission makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction.³⁵ MB and OEA strongly encourage potential bidders to continue to conduct their own research in order to determine the existence of pending or future administrative or judicial proceedings, pleadings, applications, or authorizations that might affect their decisions regarding continued participation in the auction. Additionally, a potential bidder should perform technical analyses or refresh their previous

³¹ As described in the Commission's rules, an applicant may make only minor corrections to its short-form application (e.g., changing certain contact information or authorized bidder information). See 47 CFR § 1.2105(b). A major modification includes a change of construction permit selection, change in required certifications, change in control of the applicant such as any change in ownership or control that would constitute an assignment or transfer of control of the applicant, claim of eligibility for a higher percentage of bidding credit, or change of the identification of the application's proposed facilities as noncommercial educational. *Id.*; see also, e.g., *Koch Broadcasting Corp.*, 21 FCC Rcd at 147 (dismissing short-form application due to major amendment reporting change of control of applicant).

³² An applicant should not use the FCC Auction Application System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes. Auction applicants are not permitted to make a change to the following data fields after the short-form application filing deadline: applicant name, legal classification, certifier, bidding credit, and construction permit selection.

³³ The letter summarizing the changes must include a subject or caption referring to Auction 106 and the name of the applicant, for example, "Re: Changes to Auction 106 Application of XYZ Corp." Any attachments to email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently update its FCC Form 175 application in the FCC Auction Application System once it is open and available to applicants again.

³⁴ See *Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12016, para. 69; see also 47 CFR §§ 1.65, 1.2105(b). Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660 or by email to auktion106@fcc.gov.

³⁵ See, e.g., *Cellco P'ship v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585, 589 (D.C. Cir. 2001) (citing 47 U.S.C. § 309(j)(6)(D)).

analyses to assure itself that, should it become a winning bidder for any Auction 106 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant should inspect any prospective transmitter sites located in or near any service area for which it plans to bid, to confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding any applicable federal, state, and local requirements.³⁶ Participants in this auction should continue such research throughout the auction. For further details regarding due diligence, please refer to the *Auction 106 Procedures Public Notice*, section III.A.³⁷

C. New Entrant Bidding Credit Eligibility

19. An applicant seeking a new entrant bidding credit must have indicated on its short-form application that it is claiming eligibility for a credit, along with the percentage of the bidding credit it is claiming.³⁸ The bidding credit percentage indicated on the short-form application as of the February 11, 2020, filing deadline is the maximum level of bidding credit that an applicant can claim for this auction.³⁹ Circumstances may arise after the short-form application deadline under which an applicant may no longer be eligible to claim a bidding credit or may only be eligible for a bidding credit at a lower percentage. This might be the case, for example, where the applicant or one of its attributable interest holders acquires an interest in another radio station after the February 11, 2020, deadline.⁴⁰ Any change affecting eligibility for the new entrant bidding credit must be reported immediately, and no later than five business days after the change occurs,⁴¹ if the change could result in the reduction or loss of the credit originally claimed on the short-form application.⁴² To report any change regarding its new entrant bidding credit eligibility claim, an applicant must submit a letter briefly summarizing the change by email to the following address: auction106@fcc.gov.

D. Prohibition of Certain Communications.

20. MB and OEA remind applicants that the Commission's rules prohibiting certain communications apply to each applicant that filed a short-form application in Auction 106.⁴³ Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the deadline for filing a short-form application, all applicants in this auction are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-

³⁶ 47 CFR pt. 1, subpart I.

³⁷ See *Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12017-18, paras. 72-76.

³⁸ 47 CFR § 73.5007.

³⁹ 47 CFR § 73.5007(a).

⁴⁰ Additional information on the new entrant bidding credit may be found in the *Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12009-13, paras. 49-59.

⁴¹ An applicant's obligation to make such amendment or modification to its pending application continues until it is made. See 47 CFR §§ 1.65, 1.2105(b)(4); see also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522-23 paras. 6-8. See e.g., *Vermont Tel. Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130 (EB 2011) (finding auction applicant apparently liable for forfeiture in the amount of \$34,000 for failing to submit accurate bidding credit information and failing to maintain the continuing accuracy of bidding credit information in its application).

⁴² The Commission has recognized that changes occurring subsequent to the short form application filing deadline, which could serve as the basis for reducing or eliminating an applicant's previously claimed bidding credit eligibility, may arise in a wide range of circumstances. See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rule Making, 25 FCC Rcd 1583, 1611-14, paras. 57-63 (2010). See also 47 CFR § 73.5007(a).

⁴³ 47 CFR §§ 1.2105(c)(1), 73.5002(d), (e).

auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.⁴⁴

21. This prohibition took effect as of the short-form application filing deadline, which for Auction 106 was February 11, 2020, at 6:00 p.m. ET, and ends at the down payment deadline, which will be announced in a public notice released shortly following close of bidding.⁴⁵ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**⁴⁶

22. We also emphasize that, for purposes of this prohibition, an “applicant” includes all controlling interests of the entity submitting a short-form application to participate in the auction, including all officers and directors of that entity and all holders of interests amounting to 10% or more of the entity submitting a short-form application.⁴⁷ Thus, for example, a violation of section 1.2105(c) of the Commission’s rules could occur when an individual serves as an officer and/or director for two or more Auction 106 applicants.⁴⁸ Therefore, applicants should continue to take precautionary steps to prevent prohibited communications between any of the entities or persons described as covered by the prohibition.⁴⁹

23. In connection with 2015 amendments to the competitive bidding rules, the Commission now prohibits a joint bidding arrangement, including any arrangement relating to the permits or licenses being auctioned that addresses or communicates, directly or indirectly, bidding at the auction, bidding strategies, including any arrangement regarding price or the specific permits or licenses on which to bid, and any such arrangement relating to the post-auction market structure.⁵⁰ The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from the Commission’s rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant’s auction application.⁵¹ An applicant may continue to communicate pursuant to any pre-existing agreement, arrangement, or understanding that is solely operational or that provides for transfer or assignment of license, provided that such agreement, arrangement, or understanding does not involve the communication or coordination of bids (including amounts), bidding strategies, or the particular

⁴⁴ *Id.*, § 1.2105(c).

⁴⁵ *Id.*, § 1.2105(c)(1).

⁴⁶ A party that submits an application becomes an “applicant” under the rule at the application filing deadline and that status does not change based on subsequent developments. *See, e.g., Star Wireless*, 522 F.3d at 469 (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an “applicant” for purposes of the rule and remains subject to the prohibition on certain communications until the applicable down payment deadline.

⁴⁷ 47 CFR § 1.2105(c)(5)(i).

⁴⁸ *See e.g., Lotus Communications Corp.*, Order, 23 FCC Rcd 9107 (WTB 2008) (affirming finding of apparent violation of communication prohibitions of section 1.2105(c) when one individual served as officer for two auction applicants); *TCCSA, Inc.*, Letter Order, 20 FCC Rcd 14648 (MB/WTB 2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants shared same individual as an officer and director).

⁴⁹ *See Application of Nevada Wireless*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11977-78, paras. 11-13 (WTB 1998). OEA and MB caution, however, that the mere existence of precautionary measures will not outweigh specific evidence of a prohibited communication, nor will it preclude the initiation of an investigation when warranted. *Id.* at 11978, para. 13.

⁵⁰ 47 CFR § 1.2105(a)(2)(ix). *See Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493, 7575-76, para. 195 (2015) (*Updating Part 1 Report and Order*) (modified by Erratum, 30 FCC Rcd 8518 (2015)).

⁵¹ *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-77, paras. 195-99.

permits or licenses on which to bid and provided that such agreement, arrangement, or understanding is disclosed on its application.⁵²

24. *Disclosure Obligations.* Section 1.2105(c)(4) requires each auction applicant to report a prohibited discussion or disclosure regarding bids or bidding strategy to the Commission in writing immediately, but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under section 1.65.⁵³ The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.⁵⁴

25. *Reporting Prohibited Communications.* A party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection, such as submission of filings to the Commission's Office of the Secretary or ECFS.

26. The Commission amended section 1.2105(c) to minimize the risk of inadvertent dissemination of information by requiring any party to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions.⁵⁵ Pursuant to the rule, any report required by section 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 106 Procedures Public Notice*.⁵⁶

27. A party seeking to report such a prohibited communication is encouraged to consult with the Auctions Division staff if it has any questions about the procedures for submitting such reports.⁵⁷ The *Auction 106 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.⁵⁸

28. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, or other agreements, understandings, or arrangements it has entered into that relate to the competitive bidding process.⁵⁹

29. *Possible Sanctions.* Any applicant found to have violated section 1.2105(c) of the Commission's rules may be subject to sanctions.⁶⁰ If an applicant is found to have violated the

⁵² *Id.* See also *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794 (WTB 2015).

⁵³ 47 CFR § 1.2105(b); see also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Seventh Report and Order, 16 FCC Rcd 17546, 17553-55, paras. 13-17 (2001).

⁵⁴ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007).

⁵⁵ *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4.

⁵⁶ *Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12007-08, paras. 43-45.

⁵⁷ See section IV., "Contact Information" below.

⁵⁸ See *Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12016-17, paras. 68-71.

⁵⁹ See 47 CFR § 1.2107(d).

⁶⁰ See 47 CFR §§ 1.2105(c), 1.2109(d).

Commission's rules in connection with its participation in the competitive bidding process,⁶¹ it may be subject to forfeiture of its upfront payment, down payment, or full bid amount, and it may be prohibited from participating in future auctions, among other sanctions.⁶²

E. Submission of Auction-Related Filings

30. A party wishing to submit a request, a complaint, or other information concerning Auction 106 should, in addition to following other procedures prescribed by the Commission's rules, send a copy by email to auction106@fcc.gov. We occasionally receive complaints regarding specific bidders and requests to suspend bidding during an auction. While we reserve the right to take appropriate action during an auction to preserve the integrity of the auction process, it is generally our practice to address any such allegations only after a winning bidder has submitted its long-form application, when there is greater opportunity for investigation of such allegations, if warranted. The Commission will not investigate any complaints or allegations that are not accompanied by full contact information, including name, address, and telephone number, for the complaining party or parties.

F. Ex Parte Rule

31. Applicants should also be aware that the Commission has generally treated mutually exclusive short-form applications to participate in the auctions process as exempt proceedings and, therefore, not subject to the *ex parte* prohibitions that pertain to restricted proceedings.⁶³

IV. CONTACT INFORMATION

32. For specific questions about an applicant's incomplete status or its application deficiencies, the applicant should contact the staff reviewer identified in the correspondence sent to the applicant by overnight mail.

33. Additional information for applicants is available at the Auction 106 web page (www.fcc.gov/auction/106).

34. For further information concerning Auction 106, contact:

General Auction Information

General Auction Questions

FCC Auctions Hotline

(888) 225-5322, option two; or
(717) 338-2868

Auction 106 Process and Procedures

Bidding Procedures
Auction Schedule

Auctions Division, OEA

Auctions Hotline 717-338-2868

Auction 106 Legal Information

Auction Rules, Policies, Regulations, Including
Reports of Section 1.2105(c) Violations and
Application Modifications

Auctions Division, OEA

(202) 418-0660
Lynne Milne (Attorney)
Daniel Habib (Attorney)

⁶¹ For information about the applicability of the antitrust laws to auction applicants, see *Auction 106 Procedures Public Notice*, 34 FCC Rcd at 12009, para. 48.

⁶² See 47 CFR § 1.2109(d). See also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

⁶³ See *Commission Announces that Mutually Exclusive "Short-Form" Applications (Form 175) to Participate in Competitive Bidding Process ("Auctions") Are Treated as Exempt for Ex Parte Purposes*, Public Notice, 9 FCC Rcd 6760 (1994). See also 47 CFR § 1.1202(d)(1) Note 1.

Licensing Information

Service Rules, Policies, Regulations
Licensing Issues, Engineering Issues
Due Diligence, Incumbency Issues

Audio Division, MB

(202) 418-2700
Lisa Scanlan (Attorney)
Tom Nessinger (Attorney)
James Bradshaw (Engineer)

Technical Support

Hardware/Software Issues with Electronic Filing

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

Payment Information

Instructions for Wiring Upfront Payments and
Completing Form 159

**FCC Revenue & Receivables Operations
Group/Auctions**

Scott Radcliffe (202) 418-7518, or
Theresa Meeks (202) 418-2945
(202) 418-2843 (fax) or email to
RROGWireFaxes@fcc.gov

35. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

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